IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY EIGHTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

HON'BLE SRI JUSTICE P.S.NARAYANA

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WRIT PETITION NO : 5981 of 1997

Between:

S. BALAPPA S/O BEESAPPA
R/O MALKAPUR, TANDUR MANDAL,
R.R. DISTRICT.

..... PETITIONER

AND

1 THE CO-OPERATIVE TRIBUNAL
GAGAN VIHAR, HYDERABAD
2 DIVISIONAL CO-OPEATIVE OFFICDR,
VIKARABAD
3 MALKAPUR VADDERE LABOUR CONTRACT CO-OP SOCIETY,
MALKAPUR, TANDUR MANDAL,
RANGA REDDY DISTRICT

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, direction or order more particularly in the nature of writ of certiorari, call for the records pertaining to the orders passed in C.T.A. No. 137/95 dated 14/7/96 of co-operative tribunal at Hyderabad the 1st respondent herein and quash the same illegal, arbitrary and against the provisions of A.P. C0-operative societies and pass.

Counsel for the Petitioner: MR.S.NARASIMHA RAO

Counsel for the Respondent Nos. 1 & 2: GP FOR COOPERATION

The Court made the following :

ORDER:

S. Balappa, the writ petitioner filed the present writ petition praying for a writ of Certiorari calling for the records pertaining to the orders in C.T.A. No. 137/95 dt. 14-7-1996 of Co-operative Tribunal at Hyderabad (1st respondent) herein and quash the same as illegal, arbitrary and against the provisions of the A.P. Co-operative Societies Act, 1964 (hereinafter in short referred to as Act for the purpose of convenience) and pass such other orders.

Sri S. Narasimha Rao, learned counsel representing the writ petitioner submitted that at no point of time there was an enquiry relating to the writ petitioner and during audit etc., the writ petitioner was not fastened with any liability and it was found that Ravinder, Ramulu and Ambanna alone were responsible and show cause notice was issued that why recovery should not be effected from them and the mere fact that the writ petitioner, at some point of time, had undertaken to pay the amount would not alter the situation. The learned counsel would maintain that a remedy, if any, may be elsewhere but definitely not by invoking Section 60 of the Act.

Per contra, the learned Government Pleader for Co-operation had pointed out to the reasons which had been recorded by the first respondent at paras 8 to 13 and would contend that in the light of the specific undertaking given by the writ petitioner he would fall within the meaning of Section 60 of the Act and hence the writ petitioner cannot escape from the liability. The counsel also pointed out that in view of the facts and circumstances, the surcharge order even as against the writ petitioner

definitely can be sustained.

Heard the counsel.

The writ petitioner worked as President of Malkapur Vaddera Labour Contract Cooperative Society, Malkapur, Tandur Mandal, Ranga Reddy District. The District Co-operative Officer, ordered inspection under Section 52 of the Act by proceedings Rc. No. 3167/93-P dated 7-7-93 and appointed the second respondent herein as Inspecting Officer. The second respondent conducted inspection and submitted a report. Basing on the said inspection, surcharge notice was issued to three employees viz., Sri G.Ravinder, A., Ramulu and Ambanna to show cause why an amount of Rs.11,660/- should not be recovered from them. The aforesaid persons submitted their explanation stating that they had handed over the said amount to the writ petitioner but they had not produced any evidence to show that they paid the said amount to the writ petitioner. Basing on the said reply, the second respondent due to political pressure forced the writ petitioner to give an undertaking to repay the amount and basing on such forced undertaking the second respondent issued notice under Section 60 of the Act to show cause why the amount should not be recovered from the writ petitioner and without even waiting for any reply, without waiting for independent enquiry, the second respondent i.e., the investigating officer passed an order of surcharge as against the writ petitioner for recovery of Rs.11,660/-. Aggrieved by the same, the writ petitioner filed appeal before the first respondent Co-operative Tribunal at Hyderabad and the same was numbered as C.T.A.No.137 of 1995 and the first respondent without considering several questions raised by the writ petitioner just basing on the undertaking given by the writ petitioner had dismissed the appeal. Hence, the present writ petition.

As can be seen from the material available on record, the inspecting officer and the surcharge officer is one and the same. It is also not in controversy that during the audit and inspection, it had been detected that three employees viz., Ravinder, Ramulu and Ambanna are responsible for an amount of Rs.11,660/- and the same to be recovered from them and show cause notices had been issued to the said three employees. On the statement alleged to have been made by them relating to the payment said to have been made by the said persons to the writ petitioner and on the strength of the undertaking referred to supra, ultimately the writ petitioner was

fastened with the liability. As can be seen from the impugned order, the first respondent made the said order basing on the strength of the said undertaking, which is said to have been made by the writ petitioner under certain circumstances due to political pressure.

No counter affidavit had been filed denying the allegations made in the affidavit filed in support of the writ petition. Section 60 of the Act reads as hereunder:

*60. **Surcharge:- (1)** Notwithstanding anything contained in any other law for the time being in force where in the course of an audit under Section 50 or an inquiry under Section 51 or an inspection under Section 52 or Section 53, or the winding up of a society, it appears that any person who is or was entrusted with the organization, affairs or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or has been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has made any payment contrary to the provisions of this Act, the rules or the bye-laws, the Registrar himself, or any person specially authorised by him in this behalf, of his own motion or on the application of the committee, liquidator or any creditor or contributor, may inquire into the conduct of such person or officer or servant and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retention, breach of trust, or willful negligence as the Registrar or the person authorised as aforesaid thinks just;*

Provided that no order shall be passed against any person referred to in this sub-section unless the person concerned has been given an opportunity of making his representation.

(2) Any sum ordered under this section to be repaid to a society or recovered as a contribution to its assets maybe recovered on a requisition being made in this behalf by the Registrar to the Collector in the same manner as arrears of land revenue.

(3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by his act.

To bring a case within the scope of Section 60 it should appear that any person who has taken part in the management of the society or any past or present officer of the

society has misappropriated or fraudulently retained any money or other property or has been guilty of breach of trust in relation to the society and it must also appear in the course of the audit or enquiry or in an inspection or on the winding up of a society, the said amount had fallen due to be recovered from the concerned person.

As can be seen from the material available on record and also findings recorded by the first respondent, but for the undertaking given, the writ petitioner was not found to be liable at any prior point of time and evidently during either inspection or the audit no notice had been issued to the writ petitioner. It may be that a remedy may be elsewhere but definitely not by invoking Section 60 of the Act in the light of clear provisions specified in the section 60 of the Act, which had been referred to supra. The circumstances under which the undertaking had been given and the facts relating thereto need not be gone into in the present proceeding in detail. It is suffice to say that on the strength of the undertaking the writ petitioner cannot be brought in as falling under Section 60 of the Act.

Hence, in view of the findings recorded above, the writ petitioner is bound to succeed and accordingly the writ petition is hereby allowed. No order as to costs. However, it is made clear that the authorities under the Act are at liberty to invoke other remedies, if any, available as against the petitioner in this regard.

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P.S. NARAYANA, J

Dt. 28/1/2005

Note:

L.R copy to be marked.

That Rule Nisi has been made absolute as above.

Witness the Honourable Sri Devinder Gupta, the Chief Justice on this the Friday the Twenty eighth day of January Two thousand and Five.

Kvrk

One Fair Copy to the Hon'ble Mr. Justice P.S. NARAYANA

--(For his Lordships kind perusal)

To

1 THE CO-OPERATIVE TRIBUNAL
GAGAN VIHAR, HYDERABAD
2 The Divisional Co-operative Officer,
VIKARABAD
3. Two CCs to GP for Co-operation, High Court Buildings, Hyderabad(OUT).

4. 8 LR copies.

5. The Under Secretary, Union of India, Ministry of Law, Justice and Company affairs, New Delhi.

6. The Secretary, A.P., Advocates' Association Library, High Court Buildings, Hyderabad.

7. Two CD copies.